NOTES OF CASES.

Abutting Owners—Construction of Opening under Sidewalk.—In Kress *v.* Miami, 82 So. 775, 7 A. L. R. 640, the Supreme Court of Florida held that the owner of the fee in a street has the right, subject to reasonable municipal regulation, to make openings in the sidewalk to give access to the area beneath; but he is bound so to cover the opening that it shall at all times be as safe for the use of the public as if it did not exist, and public travel over the same be not unreasonably interfered with.

The court said in part: "The authorities are not in harmony, but they may be grouped into three classes: those that hold that the owner of the fee to the street is also the owner of the subsurface and may make excavations therein if he does not unreasonably interfere with the public easement; those that hold that excavations may be made as long as they are not forbidden by ordinance or other regulation of the city; those that hold that every excavation in the street or sidewalk made without municipal consent is a nuisance per se.

"Those in the first group follow the older, and we think the better, rule, as laid down by so eminent an authority as Lord Mansfield, who said: '1 Rolle, Abr. 392, Letter B, pl. 1, 2, is express—"that the King has nothing but the passage for himself and his people, but the freehold and all profits belong to the owner of the soil." So do all the trees upon it, and mines under it (which may be extremely valuable). The owner may carry water in pipes under it.' Goodtitle ex dem. Chester *v.* Alker, 1 Burr. 133, 97 Eng. Reprint, 231.

"This doctrine has been modified by some of the later decisions of the courts of this country, but we cannot follow those that seek to extinguish all rights of the owner of the fee to the subsoil, or give to municipalities the power to take from such owner his unsurrendered right in the subsurface. The distinction between the doctrine of those courts that hold every excavation under the street or sidewalk made without municipal authority is a nuisance per se, and those that hold they are lawful so long as not forbidden by the ordinances of the city, is more in name than in substance. A right that may be taken from a person at the will of the city is not a right, but a privilege, and, when we sustain the right of the city to grant or withhold from the owner of the fee the privilege of making excavations in the subsoil of a street adjacent to his property, his right vanishes. Neither can a municipality deprive the owner of his property or property rights, by declaring by ordinance or otherwise that to be a nuisance which, in fact, is not a nuisance. * * *

"Upholding, as we do, the right of the owner of the fee in a street to use the subsurface the same as his other property, so long as he

does not interfere with the rights of the municipality below the surface for sewers and pipes for water, gas, and other proper purposes, it follows that the owner has the right, subject to reasonable municipal regulation, to make openings in the sidewalk to give access to the area beneath; but he is bound so to construct and cover the opening that it shall at all times be as safe for the use of the public as if it did not exist, and public travel over the same be not unreasonably interfered with. The city has the right to require the appellant to procure a permit before making an opening in the sidewalk, and it has the right to see that the proper safeguards are thrown about the work, and that in its progress the right of the public to use the sidewalk is not unreasonably interfered with. It may also regulate how the excavation shall be made, and the trap-doors or other appliances for closing the opening constructed; but it may not arbitrarily refuse to grant a permit, nor, under the guise of regulation, place an additional burden upon the abutting owner, or make such regulations as would in effect deprive him from exercising the rights recognized in this decision."

Handwriting—Knowledge Obtained from Family Correspondence as Qualifying Witness to Testify to Genuineness of Signature.—In Johnston *v.* Bee, 100 S. E. 486, 7 A. L. R. 252, the Supreme Court of Appeals of West Virginia held that grandchildren, who have obtained their knowledge of their grandmother's handwriting only by inspection and repeated readings of letters from the grandmother to their mother, preserved by the family for a long period of time for sentimental reasons, are qualified to testify to their opinions as to the genuineness of the grandmother's signature.

The court said in part: "A decided weight of authority affirms the right of an interested person or party to testify to the handwriting of a signature purporting to be that of a deceased person, if he is otherwise qualified, even though he would be an incompetent witness to testify to the act of signing. In Iowa, Massachusetts, New York, North Carolina, Texas, and Wisconsin the courts hold that such testimony involves no more than a matter of opinion, and does not relate to a personal transaction or communication between the witness and the decedent. 40 Cyc. 2327; Ware *v.* Burch, 148 Ala. 529, 42 So. 562, 12 Ann. Cas. 669, note 671; 25 Am. & Eng. Enc. Law, 261. On the other hand, the contrary has been held in Alabama, Georgia, Kentucky, Missouri, and Pennsylvania, as will be seen by reference to the books already cited. The intermediate court of appeals of Indiana has apparently held both ways as to such testimony. Merritt *v.* Straw, 6 Ind. App. 360, 33 N. E. 657; Shirts *v.* Rooker, 21 Ind. App. 420, 52 N. E. 629. The decisions adopting the minority rule take the view that, inasmuch as proof of the signature authenticates